

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

JOHN DAVID KENNEMER,

Plaintiff,

v.

UTMB MEDICAL, et al.,

Defendants.

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Case No. 6:21-cv-266-JDK-KNM

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff John David Kennemer, a former inmate of the Texas Department of Criminal Justice, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 about alleged violations of his constitutional rights in prison. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On September 23, 2021, the Magistrate Judge submitted a Report and Recommendation that the University of Texas Medical Branch (UTMB) and Warden Upshaw be dismissed as defendants to this action on the bases of sovereign immunity and failure to state a claim, respectively, pursuant to 28 U.S.C. § 1915(e)(2)(b). Docket No. 20. The Report observed that Plaintiff's claims against the other named Defendants are proceeding as instructed by separate order. *Id.* at 1, 3. A copy of this Report was mailed to Plaintiff, who did not file written objections to the Report within the time provided.


This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent

assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews her legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 20) as the findings of this Court. It is therefore **ORDERED** that Defendants UTMB and Upshaw are dismissed from this suit with prejudice.

So **ORDERED** and **SIGNED** this **8th** day of **December, 2021**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE